

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEVIN D. BLACK,

Plaintiff,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 2:09-CV-02343-PMP-(LRL)

ORDER

Plaintiff has submitted an amended complaint (#8). The court has reviewed it, and the court will serve it upon defendants for a response.

Of the defects in the original complaint (#6), plaintiff has corrected all but one: The capacities in which the defendants are sued. The court explained to plaintiff that he cannot sue defendants in their official capacities because effectively he would be suing the State of Nevada, and the State of Nevada is not a person for the purposes of a civil rights action pursuant to 42 U.S.C. § 1983. Order (#5), pp. 2-3. In the amended complaint (#8), plaintiff again notes that he is suing the defendants in their official capacities. Despite plaintiff's failure to follow instructions to correct this problem—simply by marking the correct lines on the complaint form—a presumption exists to construe this action as an individual-capacity action because otherwise this action would be barred. See Romano v. Bible, 169 F.3d 1182, 1186 (9th Cir. 1999). The court will so construe petitioner's claims, and defendants should do the same.

IT IS THEREFORE ORDERED that the clerk shall add Catherine Cortez Masto, Attorney General for the State of Nevada, as counsel for defendants.

1 IT IS FURTHER ORDERED that the clerk shall send electronically serve
2 defendants with a copy of this order and a copy of the amended complaint (#8). The Attorney
3 General shall advise the court within twenty (20) days from the date that this order is entered
4 whether service of process for the named defendants is accepted. If the Attorney General accepts
5 service of process for any of the defendants, such defendant(s) shall file and serve an answer or
6 other response to the complaint within thirty (30) days of the date of the notice of acceptance of
7 service. If service cannot be accepted for any of the named defendants, then plaintiff will need to
8 file a motion identifying the unserved defendant(s), requesting the issuance of a summons, and
9 specifying a full name and address for said defendant(s).

10 IT IS FURTHER ORDERED that henceforth, plaintiff shall serve upon defendants
11 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,
12 motion or other document submitted for consideration by the court. Plaintiff shall include with the
13 original paper submitted for filing a certificate stating the date that a true and correct copy of the
14 document was mailed to the defendants or counsel for the defendants. The court may disregard any
15 paper received by a district judge or magistrate judge which has not been filed with the clerk, and
16 any paper received by a district judge, magistrate judge or the clerk which fails to include a
17 certificate of service.

18 DATED: August 31, 2010.

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20 PHILIP M. PRO
21 United States District Judge
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